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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**
10 **FAMILY DIVISION**

<p>11 [REDACTED] Plaintiff,</p> <p>12 vs.</p> <p>13 [REDACTED] Defendant.</p> <p>14 _____/</p>	<p>CASE NO: D-21 [REDACTED]-D</p> <p>DEPT NO: Q</p> <p>Hearing Date: February 18, 2025.</p> <p>Hearing Time: 10:00 a.m.</p>
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15 **OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER GRANTING**
16 **CAMERA ACCESS AND COUNTERMOTION**
17 **TO UNSEAL AND FOR LIMITED INTERVENTION**

18 NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT
19 AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14 DAYS OF YOUR
20 RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE
21 COURT WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED
22 RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED
23 HEARING DATE.

24 COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by
25 and through the undersigned counsel, and hereby construes Plaintiff's *Ex Parte*
26 *Request for an Order Shortening Time* as either a motion to close or motion for
27 reconsideration of media access and thus files this opposition to same and
28 counter-motion to unseal and to intervene. This opposition and counter-motion is
based upon the following memorandum of points and authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 This filing is triggered by Defendant’s mischaracterization of the Supreme
3 Court’s holding in *Nester v. Eighth Judicial Dist. Court*, 141 Nev. Advance Opinion 4
4 (Jan. 30, 2025) as “one may easily conclude...that the hearing should be closed”
5 because “the only issues are high-conflict child custody, visitation, and support
6 matters”, none of these issues of which were sufficiently alarming to warrant
7 instructions mandating closure. Indeed, the sole¹ issue the Supreme Court
8 suggested may warrant closure following a strict scrutiny analysis specifically had to
9 do with “mental health”. *Id.*

12 **1. The Nester Court Reinforced the Falconi Court**

13 The *Nester* Court recognized a simple principle. There is no law or court rule
14 that can supersede the Constitution to deprive the Court of discretion to close a
15 hearing, just as there is no law or court rule that can supersede the Constitution
16 deprive the Court of discretion to open one. *Falconi v. Eighth Judicial Dist. Court*,
17 140 Nev. Adv. Rep. 8, 543 P.3d 92 (Nev. 2024). The *Falconi* writ issued because the
18 former occurred. The *Nester* writ issued because the latter occurred. The Supreme
19 Court is not categorically in favor of or against press access, but rather, disapproves
20 of “sweeping generalization[s]” and requiring that “a case-by-case basis and judicial
21 discretion is to be exercised”. *Nester, Id.*

24 The *Nester* Court, in its first published sentence, characterized Plaintiff as
25 “challenging a district court order allowing media access in order to protect **what**
26

27 ¹ “Just because mental health considerations may be widespread in these proceedings does not
28 automatically indicate that closures are unobtainable. To the contrary, that characteristic might be a
reason more of these types of proceedings are closed.” *Nester, Id.*

1 **[she] claims to be** sensitive information about her children.” (emphasis added). *Id.*
2 The *Nester* Court could have made rulings on these concerns, but deliberately
3 chose not to. The *Nester* Court could have disapproved of or abrogated the *Falconi*
4 decision in its entirety, but instead recognized “that ‘open family law proceedings
5 play a significant role in the functioning of the family court, warranting a
6 presumption of open access,’ hinging on the First Amendment’s ‘purpose to ensure
7 that the individual citizen can effectively participate in and contribute to our
8 republican system of self-government.’” *Id.* Indeed, the *Nester* Court emphatically
9 bolstered the effect of the *Falconi* decision by uniting² behind its principles and
10 adding a **requirement** that judges “*sua sponte* consider possible alternatives to
11 [the] closure even when they are not offered by the parties.” *Id.* citing *United States*
12 *v. Allen*, 34 F.4th 789, 797 (9th Cir. 2022).

15 **2. The Strict Scrutiny Analysis Must Guide the Court**

16 ONJ’s position³ is as unchanged before the writ as it is now afterwards. This
17 position is consistent with both the *Falconi* and *Nester* Court’s requirements. A
18 statute or rule survives the First Amendment scrutiny only if the Court construes the
19 language in a way that allows the strict scrutiny test. Compare *State v. Castenada*,
20 126 Nev. 478, ___, 245 P.3d 550, 552 (2024). See also *Falconi v. Secretary of State*,
21 299 P. 3d 378 (2013) (relying upon the language of NRS 217.464(2)(b) to save the
22 statutory scheme by shoehorning in the necessary constitutional principles.) If the
23 Court can find no such language, the statute or rule is nullified. Compare *Falconi, Id.*
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28 ² Unlike the *Nester* decision, The *Falconi* decision was not unanimous.

³ Defendant’s non-opposition to press and public access continues to this day.

1 **a. A Critical Backdrop of the Role of the Press in Courtroom Coverage**

2 Public transparency in judicial proceedings is vital when a jury is absent, as
3 open processes help prevent abuses of power, ensure accountability, and maintain
4 public trust in the fairness and integrity of the legal system, whereas secrecy risks
5 fostering skepticism and undermining confidence in justice. “[T]he absence of a
6 jury...makes the importance of public access to a preliminary hearing even more
7 significant” because the jury is “an inestimable safeguard against the corrupt or
8 overzealous prosecutor and against the complaint, biased, or eccentric judge.”
9 *Falconi, Id. citing Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1, 8 (1986) (given
10 complains of “compliant” and “biased” judges, “one of the important means of
11 assuring a fair trial is that the process be open to neutral observers” because the
12 “interests [of parties’ and the public] are not necessarily inconsistent.”) See also *Del*
13 *Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 249 (1996) (“secret judicial
14 proceedings pose [a threat] to public confidence in this court and the judiciary”
15 because “secrecy encourages misunderstanding, distrust, and disrespect for the
16 courts.”)

17 **b. An Important Backdrop of the Role of ONJ Specifically**

18 The purpose of ONJ’ is to educate and inform through the lens of a camera,
19 consistent with the Supreme Court’s educational and informational mandate. SCR
20 241(1). ONJ’s coverage of non-family court proceedings vastly outnumber family
21 court coverage, but several recent events have sharply increased the public interest
22 in the operation of the family court, including the Houston-Prince case⁴, the Scott
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28 ⁴ A divorce lawyer, Joe Houston, shot dead divorce lawyer Dylan Houston’s ex and her attorney,

1 MacDonald case⁵, the Doug Crawford case⁶, and the Gary Guymon⁷ case. Even
2 more specific, is the relevance of a decision by District Court Judge Gregory Gordon
3 stripping a mother of physical custody for manipulating her child by “engag[ing] in a
4 pattern of false accusations...of [] sexual abuse that [were] found [not credible].”
5 *Cobian vs Ramirez*, 557 P. 3d 1283 (Nev. *Unpublished* 2024). The issues before this
6 Court underscore a growing discontentment by the public not so much on how they
7 are disposed but more so the process itself. Indeed, high-conflict child custody
8 cases are of specific interest to the public, some of which involve sexual abuse
9 allegations that spill into criminal court; examples of which District Court Judges
10 Mari Parlade⁸ and Michele Leavitt allowed⁹ comprehensive electronic coverage of.
11 Lastly, it is important to understand that Parties cannot avoid¹⁰ media coverage
12 simply by barring access to records and documents. The First Amendment allows
13 publication regardless of this Court’s sealing orders. Indeed, there are entities that
14 sidestep this Court’s supervision by simply obtaining sealed records from one of the
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19 Dennis Prince. District Court Judges Bill Henderson and Dawn Throne allowed comprehensive
20 electronic coverage of the proceedings.

21 ⁵ John Scott MacDonald, a now disbarred divorce lawyer, stands accused of stealing money
22 connected to interpleader actions. Justice of the Peace Amy Chelini and District Court Judge
23 Michele Leavitt are allowing comprehensive electronic coverage.

24 ⁶ Doug Crawford stands accused of sexually exploiting clients and employees. The District and
25 Justice Courts allowed comprehensive electronic coverage, the proceedings of which were
26 dismissed following the divorce lawyer’s consent to disbarment.

27 ⁷ Gary Guymon, a defense and family law attorney, stands accused of pimping his clients and
28 solicitation of murder. Justices of the Peace Suzan Baucum and Noreen Demonte are allowing
comprehensive electronic coverage of the proceedings, which are ongoing.

⁸ In *Fessler v. Fessler*, the child victim, now an adult, consented to media coverage and requested
her supporters be allowed access to the courtroom. She has since sued her abuser, a registered
sex offender, the proceedings of which are under electronic coverage due to the approval of District
Court Judge Mark Denton.

⁹ In *Nevada vs John McDonald*, the children provided general, non-specific testimony at sentencing,
their identities of which were redacted.

¹⁰ The “gag order” is the only mechanism that could do this, which is not requested by Defendant and,
given the lack of an empaneled jury, would have no likelihood of success.

1 litigants and even inviting litigants to appear on podcasts to discuss their sealed
2 cases. These one-sided discussions often involve a disparagement of the Family
3 Division, consistent with what the *Del Papa Court* warned us would occur.

4
5 Even if the court finds compelling privacy, interest, and that closure is
6 justified, closure must occur in a manner that's narrowly tailored to address the
7 specific privacy concern and issue. If this Court does find a compelling interest,
8 ONJ would suggest following the example of District Court Judge Dixie Grossman in
9 narrowly tailoring access restrictions. Judge Grossman, in allowing electronic
10 coverage of divorce proceedings, closed the court for examination of the witness on
11 one specific issue.

12 13 **3. A Countermotion to Unseal is Conditional**

14 ONJ seeks to unseal any filings that Plaintiff argues would justify closing the
15 courtroom. In other words, so long as Plaintiff is not citing the *per se* sealed status
16 of filings, no unsealing is needed and this portion of the countermotion is withdrawn.
17 If, however, Plaintiff argues that the discussion of sealed filings at a hearing justify
18 closure of the courtroom, ONJ's request to unseal those filings, whatever they may
19 be, follows.

20
21 SRCR 1(4) contemplates the scope of the rules on sealing and redaction. A list
22 of NRS Chapters are provided. The list is not exclusive¹¹ and actually manifests the
23 harmonious construction¹² principle of statutory construction with the additional
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26 ¹¹ SRCR 1(4): "These rules do not apply to the sealing or redacting of court records under **specific**
27 statutes, **such as...**" (emphasis added).

28 ¹² *Simmons Self-Storage vs Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P. 3d 850, 854 (2014) ("[T]his court interprets 'provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes' to avoid unreasonable or absurd results and give effect to the Legislature's intent.")

1 caveat that the court rules¹³ give way to any specific statute governing sealing and
2 redaction. ONJ is in agreement¹⁴ with Plaintiff that NRS 125.110 provides for the
3 sealing of specific records, but that Plaintiff may seek to seal and redact additional
4 records *via* SRCR 3(1) if the procedure for sealing is complied with and consistent
5 with the rule.
6

7 Regardless, there is precedent recognizing that certain records constitute
8 access to the courtroom. “[A]ccess to judicial records and documents stems from
9 three sources: constitutional law, statutory law, and common law.” *Howard v.*
10 *State*, 128 Nev. 736, 291 P. 3d 137 (2012). While there were no constitutional
11 issues relevant to the *Howard* Court’s analysis at the time, the Supreme Court later
12 clarified that a First Amendment right of access to the underlying proceedings
13 exists. *Falconi, Id.*

14 The *Falconi* Court broadly expanded the scope of the ruling in *Stephens*
15 *Media, LLC. v. Eighth Judicial District Court*, 125 Nev. 849, 221 P. 3d 1240 (2009)
16 from criminal proceedings to all civil proceedings, which recognized a powerful
17 distinction left untouched by the *Howard* Court; namely, that there was a
18 distinction between oral proceedings and documentation that “merely facilitate[s]
19 and expedite[s]” one of those oral proceedings. When records implicate First
20 Amendment concerns, the strict scrutiny test must be applied. *Civil Beat Law Ctr.*
21 *for the Pub. Int., Inc. v. Maile*, 113 F.4th 1168, 1180 (9th Cir. 2024) (Hawai’i Court
22 rules requiring all medical and health records be filed under seal without further
23 order of a judge are unconstitutionally overbroad.)
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27 ¹³ *Weddell v. Stewart*, 127 Nev. 645, ___, 261 P. 3d 1080, 1084 (2011) (“[R]ules of statutory
28 construction apply to court rules.”)

¹⁴ Plaintiff has argued this point before both this Court and the Supreme Court.

1 NRS 125.110(2) cannot supersede the Constitution any more than NRS
2 125.080, EDCR 5.207, and EDCR 5.212 could. Quite simply, “local rules and
3 statutes [that] require the district court to close the proceeding [unconstitutionally]
4 eliminate the process by which a judge should evaluate and analyze the factors that
5 should be considered in closure decisions, and by bypassing the exercise of judicial
6 discretion, the closure cannot be narrowly tailored to serve a compelling interest.”
7 *Falconi, Id.* For these same reasons, reliance on statutes under NRS Chapter 432B
8 and similar federal statutes is unavailing; the First Amendment is enshrined in the
9 federal constitution and nullifies inconsistent federal law as easily as it does state
10 federal law, as the Constitution is the supreme Law of the Land. U.S. Const. art. VI, § 2.
11

12 **4. Intervention is Conditional and Limited**

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14 SCR 230(1) and SRCR 4(2) allow ONJ to participate as a non-party only on the
15 issues of electronic coverage and unsealing, respectively. To the extent this Court
16 deems intervention necessary for ONJ to obtain standing on the issue of physical
17 access to the Courtroom, this countermotion follows. The *Stephens Media* court
18 allowed the press to intervene in criminal proceedings for “limited purpose[s]”;
19 namely, First Amendment access principles. The *Falconi Court* has broadly
20 expanded the *Stephens Media Court’s* scope to include civil proceedings, including
21 family law proceedings such as this. Accordingly, ONJ now moves for intervention
22 solely for the purposes of obtaining physical press access to the proceedings.
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1 **5. Conclusion**

2 While ONJ and Plaintiff disagree on the issue of access, ONJ is not an
3 adversary of Plaintiff. ONJ is merely interested in providing coverage of the process,
4 whatever the outcome may be.
5

6 This Court should allow physical and camera access to these proceedings,
7 with narrowly tailored restrictions to protect compelling interests, if any, consistent
8 with the First Amendment.
9

10 **NRS 239B.030(4) AFFIRMATION**

11 Pursuant to NRS 239B.030 the undersigned hereby affirms that this document
12 does not contain the social security number of any person.

13 **DATED** this Feb 6, 2025

14 By: /s/ Luke Busby
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1 DECLARATION OF ALEXANDER FALCONI

2 I, Alexander M. Falconi, declare that I have read the forgoing *Opposition* and
3 that the contents are true and correct of my own personal knowledge, except for
4 those matters I have stated that are not of my own personal knowledge, but that I
5 only believe them to be true, and as for those matters, I do believe they are true.
6

7 ***I declare under penalty of perjury that the foregoing is true and correct.***

8
9 EXECUTED this Feb 6, 2025

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